IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-88

CESAR GAUTIER TORRES,

Plaintiff-Appellee,

v.

JOSEPH A. CALIFANO, INDIVIDUALLY AND IN HIS CAPACITY AS UNITED STATES SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

MOTION FOR SUMMARY AFFIRMANCE

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INTRODUCTION

Appellant appeals from the judgment and order of a three-judge panel of the United States District Court, District of Puerto Rico, entered on February 14, 1977, one judge, McEntee, dissenting, striking down as

unconstitutional sections 1611(f) and 1614(e) of the Social Security Act. Section 1611(f) excludes individuals residing outside the United States from Supplemental Security Income benefits they would otherwise be entitled to. Section 1614(e) defines United States when used in a geographical sense as meaning the 50 states and the District of Columbia.

Plaintiff, a citizen of the United States, was found to be eligible to receive S.S.I. benefits, due to disability, while residing in Hartford, Connecticut. Upon moving to Puerto Rico his S.S.I. benefits were discontinued because he was no longer a resident of the United States.

OPINION BELOW

The opinión of the district court (App. A, infra, pp. 1A-18 A is reported at 426 F. Supp. 1106.

JURISDICTION

The judgment of the district court was entered on February 16, 1977, (App. B, infra, p. 19A). Notice of appeal to this court was filed on March 16, 1977 (App. C, infra, p. 20A). On May 6, 1977, Mr. Justice Brennan extended the time for docketing the appeal to and including June 14, 1977; and on June 14, 1977, Mr. Justice Brennan further extended the time to and including July 14, 1977. The jurisdiction of this court was invoked under 28 U.S.C. 1252. *Weinberger v. Salfi*, 422 U.S. 749, 763 n. 8.

QUESTION PRESENTED

Whether Sections 1611(f) and 1614(e) of the Social Security Act, which exclude residents of Puerto Rico from eligibility for benefits under the Program of Supplemental Security Income for the Aged, Blind, and Disabled, deny due process, liberty to move freely to and from the United States and equal protection to them.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 3, of the Constitution provides in pertinent part:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *.

The Fifth Amendment to the Constitution provides in pertinent part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

Section 1611(f) of the Social Security Act, as added, 86 Stat. 1468, 42 U.S.C. (Supp. V) 1382(f), provides:

> Notwithstanding any other provision of this title, no individual shall be considered an eligible individual for [Supplemental Security Income benefits] * * * any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to

any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

Section 1614(e) of the Social Security Act, as added, 86 Stat. 1473, 42 U.S.C. (Supp. V) 1382c(e), provides:

For purposes of this title, the term "United States," when used in a geographical sense, means the 50 States and the District of Columbia.

STATEMENT

1. The program of Supplemental Security Income for the Aged, Blind, and Disabled, as added, 86 Stat. 1465, and amended, 42 U.S.C. (Supp. V) 1381 et seq., was enacted to replace several pre-existing cooperative federal-state programs for such individuals with a single, uniform system of welfare benefits administered by the Secretary of Health, Education and Welfare. The new program guarantees a monthly income to persons who meet federally prescribed income levels and other eligibility criteria.[1]

Section 1611(f) of the Social Security Act, 42 U.S.C. (Supp. V) 1382(f), provides that persons residing

[1] The maximum income that an individual may receive and still be eligible for SSI benefits is $2,133.60 per year, which also is the maximum benefit payable to an individual. 42 Fed. Reg. 24210. These figures are subject to cost of living adjustments. See 42 U.S.C. (Supp. V) 1382f.

outside the United States are ineligible for SSI benefits. Section 1614(e) of the Act, 42 U.S.C. (Supp. V) 1382c(e), defines the term "United States" to include only the fifty States and the District of Columbia. Residents of the Commonwealth of Puerto Rico and the territories of Guam, American Samoa, and the Virgin Islands continue to be eligible for benefits under the pre-existing programs of Old Age Assistance, 49 Stat. 620, as amended, 42 U.S.C. 301 et seq., Aid to the Blind, 49 Stat. 645, as amended, 42 U.S.C. 1201 et seq., Aid to the Disabled, as added. 64 Stat. 555, and amended, 42 U.S.C. 1351 et seq., and Aid to the Aged, Blind, and Disabled, 42 U.S.C. 1381 et seq. These programs are designed, as is the SSI program, to assist the aged, blind, and totally disabled to meet their expenses for food, clothing, shelter, and other essential items of daily living. In contrast to the SSI program, however, under these programs the territories rather than the Secretary determine (subject only to broad federal guidelines) the level of benefits to which eligible individuals are entitled.[2]

2. Appellee became eligible for SSI disability benefits while he resided in Hartford, Connecticut. He received

[2] The programs are implemented by a territory's "plan" subject to the Secretary's approval (see 42 U.S.C. (1970 ed.) 1382; 45 C.F.R. 201.3) and are funded pursuant to a cost-sharing formula under which the federal government pays a portion of the benefits provided by the participating territory (see 42 U.S.C. 302). Under Puerto Rico's plan, the maximum income that an individual may receive and still be eligible for assistance is $456 per year, $516 for the aged. The benefits payable under that plan equal 40 percent of the difference between the maximum allowable income and the individual's actual income.

payments of $157.70 for the months of September through November 1975. On November 7, 1975, appellee moved to San Juan, Puerto Rico, whereupon the Social Security Administration advised him that he was no longer eligible for SSI benefits. Appellee then instituted this suit in the United States District Court for the District of Puerto Rico, claiming that the exclusion of Puerto Rico from the SSI program unconstitutionally discriminates against Puerto Rican residents and violates his constitutional right to travel. (App. A, infra, pp. 2a-3a).[3]

A single-judge district court temporarily enjoined the Secretary from discontinuing appellee's benefits, and the three-judge court was convened pursuant to 28 U.S.C. 2284(3). A majority of that court ruled that Sections 1611(f) and 1614(e) are unconstitutional as applied to a citizen who moves to Puerto Rico after having received SSI benefits while residing in one of the fifty States of the District of Columbia. The court reasoned that such persons are denied their right to travel by the challenged provisions, that the denial is not supported by any compelling governmental interest,

[3] After appellee filed his complaint, the Secretary sent him a "Notice of Planned Action" informing him that his SSI benefits would be terminated effective December 1, 1975, and advising him of his appeal rights. Appellee then filed a "Request for Reconsideration of the Notice of Planned Action," which was denied on February 20, 1976. The Secretary stipulated that that denial constituted final agency action, and the district court therefore had jurisdiction over appellee's complaint. See *Mathews v. Diaz*, 426 U.S. 67, 73.

and that Sections 1611(f) and 1614(e) therefore are unconstitutional as applied to appellee.[4]

THE QUESTION IS INSUBSTANTIAL

Appellants attempt to cloud the issue when they make use of the Territorial Clause of Article IV, Section 3, of the Constitution as being dispositive of the case by impermissibly reading it to empower Congress to distinguish between the residents of the United States and those of Puerto Rico. The argument is based on a misreading of the Insular Cases.[5] Defendant claims that the equal protection component of the due process clause is not a limit to congressional power over the residents of Puerto Rico.

1. The central issue presented by the Insular Cases was how much of the U.S. Constitution applies to non contiguous territories acquired by the United States.[6]

[4] Subsequent to the decision of the district court in this case, two other new residents of Puerto Rico brought suit in the United States District Court for the District of Puerto Rico, raising claims identical to appellee's. Relying on the decision in the instant case, a single-judge district court granted judgment in their favor. *Colon v. United States*, No. 76-1434, decided March 29, 1977. The Solicitor General has authorized an appeal from the decision in that case as well.

[5] *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

[6] Leibowitz, Arnold, *The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 Georgetown Law Journal 219.

In the most significant of the Insular Cases[7] the court held that the imposition by Congress of special duties on Puerto Rico's goods did not violate the provisions of Art. I, §8 Cl. 1 of the U.S. Constitution requiring uniformity in the imposition of duties through the United States. This decision was sustained by the doctrine of territorial incorporation which distinguished between territories destined for statehood from the time of acquisition and those not intended to be annexed into the union at the time of acquisition. Pursuant to said doctrine the U.S. Constitution applied with full force to incorporated territories,[8] but only fundamental rights inherent to the power of the United States to govern were held to be applicable to unincorporated territories.[9]

Much has been said and argued concerning the continuing validity of Puerto Rico's characterization as an unincorporated territory. Commentators have argued that the creation of Commonwealth status in 1952 had the effect of radically altering the status of Puerto Rico as an unincorporated territory. These proponents would argue that the U.S. Constitution applies in Puerto Rico with full force.[10] The court need not reach that issue in this case. It is perfectly clear now that the fundamental rights and protections invoked by plaintiff-appellee in

[7] *Downes v. Bidwell*, 182 U.S. 244.

[8] *Rassmussen v. United States*, 197 U.S. 516.

[9] *Downes v. Bidwell*, supra.

[10] Rafael Hernández Colón, The Commonwealth of Puerto Rico, Territory or State, 19 Revista del Colegio de Abogados de Puerto Rico (1959) at p. 207.

this case were among the fundamental rights held to apply to the residents of Puerto Rico in *Downes v. Bidwell* and *Balzac v. Porto Rico.*[11] Whatever doubts may have remained concerning the applicability of the fundamental right of equal protection to the residents of Puerto Rico, they were conclusively dispelled by recent decision of this court.

Even assuming arguendo that Puerto Rico's attainment of Commonwealth status in 1952 did not abrogate Congress' power to legislate with respect to Puerto Rico under Article IV, Section 3, Clause 2, it is also true that the Power of Congress is not absolute with respect to unincorporated territories. Even under the broadest possible interpretation of the Power of Congress to regulate the Territories, it could never enact legislation of fundamental rights embodied in constitutional limitations which go to the very roots of the Power of Congress to legislate. Congress is, in fact, powerless to legislate unless within the strictures of those constitutional provisions that guarantee basic fundamental rights to the residents of Territories be they part of or possession of the United States. The court recognized the applicability of the guarantees accorded by either the Due Process Clause of the Fifth Amendment or the Due Process and Equal Protection clauses of the Fourteenth Amendment apply to the residents of Puerto Rico. The court recognized the applicability of these guarantees as long ago as its decisions in the Insular Cases and more recently this

[11] This court has recently so stated in *Examining Board v. Flores de Otero*, 426 U.S. 572, at 600-602, 258 U.S. 298, 312-313.

principle was reaffirmed in *Reid v. Covert*, 354 U.S. 1 (1957) and then again in *Calero Toledo v. Pearson Yatch Leasing Co.*, 416 U.S. 663 (1974) and *Flores de Otero*, 426 U.S. 572 (1976).

The court in *Calero Toledo* and *Flores de Otero* declined to indicate, as Judge Magruder had previously similarly declined to in *Mora v. Mejias*, 206 F.2d 377, 382 (1957), the specific constitutional source of said guarantees. In both these cases the court indicated that pursuant to the provisions of either the Fifth or the Fourteenth Amendment, the challenged statutory practice was susceptible of invalidation. The Equal Protection of the Laws Clause of the Fourteenth Amendment is only a safeguard against state action and not against federal action. *Green v. Kennedy*, 309 F. Supp. 1127 (1970), appeal dismissed 400 U.S. 986 (1970), *Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 504 F.2d 483 (1974). *Kills Crow v. U.S.*, 451 F.2d 323 (1971), cert. Den. 405 U.S. 999 (1972). In the same manner in which the Fourteenth Amendment is only applicalbe to the states, the strictures of the Fifth Amendment are applicable to federal action. *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975). In both *Calero Toledo* and *Flores de Otero* the rights of the residents of Puerto Rico which were invoked were rights vis-à-vis the "state" government and not against federal action.[12] It would seem then that the applicable provisions of the U.S. Constitution should have been, in those cases, the

[12]That is unless the "state" government of Puerto Rico is viewed as a delegate agency of the U.S. Government and not of the people of Puerto Rico after adoption of the Puerto Rico Constitution in 1952.

Due Process and Equal Protection Clauses of the Fourteenth Amendment. The dilemma confronted by the court in these two recent cases is not an element of the present case. This case differs from the other two recent cases in that it is seeking to invalidate an encroachment of the federal government with fundamental rights to liberty and equal protection. As such it requires the court to find the rights guaranteed by the Due Process Clause of the Fifth Amendment to extend to Puerto Rico.

Although this court has recently declined to decide the specific source of the guarantees of equal protection afforded the residents of Puerto Rico vis-à-vis, the Commonwealth government there has never been any doubt that the federal government has always been bound by the strictures of the Due Process Clause of the Fifth Amendment with respect to all unincorporated territories. As the court stated in *Balzac*:

> "... The real issue in the Insular Cases was not whether the Constitution extended to the Philippines or Puerto Rico when we went there but which ones of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements. The guaranties of certain fundamental personal rights declared in the Constitution, as, for instance, that no person could be deprived of life, liberty, or property without *due process of law* (emphasis ours), had from the beginning, full application in the Philippines and Porto Rico...."[13]

There is no doubt that under the Organic Act of 1917, 39 Stat. 951, the insular government was subject

[13]*Balzac v. Porto Rico*, 258 U.S. 298 (1922), pp. 312-313.

to the due process clause of the Fifth Amendment. There was no doubt as to the applicability of the Fifth Amendment because the powers exercised by the insular government were delegated by the federal government. After the so called "compact" was offered to the people of Puerto Rico by Public Law 600, 64 Stat. 319, 48 U.S.C.A. §§731b-731d and by the Joint Resolution of Congress approving the Constitution adopted by the people of Puerto Rico pursuant thereto, 66 Stat. 327, 48 U.S.C.A. §731d, the newly created Commonwealth of Puerto Rico was subject to the "applicable provisions of the Constitution of the United States." The statutory language did not specify which provisions; therefore, the question of what constitutional provision was to act as a limit on the power of the Commonwealth government in order to guarantee the right to due process of law to its residents was left open. If the compact made no substantial changes to the territorial status of Puerto Rico the due process clause of the Fifth Amendment would be the applicable provision. If, on the other hand, by virtue of the compact, Congress ceased to have power to regulate local matters through the territorial clause and Puerto Rico became a self governing possession of the United States with the autonomy normally associated with that of the states, then arguably, the Fourteenth Amendment would act as the protector of the fundamental guaranty of due process against the Commonwealth of Puerto Rico.

Regardless of which constitutional provision limits the Commonwealth of Puerto Rico, it is perfectly clear that Congress is found by the due process of tne laws clause of the Fifth Amendment in its exercise of power

over Puerto Rico. Appellant's contention that Congress' broad power over its dependencies empowers it to establish classifications that distinguish between residents of the 50 states and residents of the Territories is meaningless. In order to determine whether Congress in fact acted within the scope of its constitutional power we must scrutinize its classification in light of the requirements of liberty to travel, due process, and equal protection. In doing so it will become clear that the exclusion of the residents of Puerto Rico from the S.S.I. program is so egregriously discriminatory as to violate the due process clause of the Fifth Amendment.

2. The exclusion is wholly arbitrary and irrational. The pertinent sections of the Social Security Act exclude otherwise eligible persons who are domiciled within American flag jurisdictions outside the fifty states and the District of Columbia from participation in the S.S.I. program. The classification thereby excludes a class comprised of needy and poor blind, disabled and aged persons from participating in a federal program designed for the purpose of achieving a more uniform treatment of recipients under the Federal-State public assistance programs, 1972 U.S. Code Cong. & Adm. News, p. 4989, and to insure that virtually no aged, blind or disabled person would have to live below the poverty level. 118 Cong. Record, p. H 10195, October 17, 1972. Residents of Puerto Rico were included in the S.S.I. legislation approved by the House. 1972 U.S. Code Cong. Record, pp. H-5695-5696, H5709. It was during the Senate-House Conference that the definition of residents of the United States was changed to exclude residents of Puerto Rico as well as residents of Guam and the Virgin Islands.

The exclusion of residents of Puerto Rico from the S.S.I. program followed more or less the same legislative pattern as the exclusion of residents of Puerto Rico from the Prouty Amendment, 42 U.S.C. 428. See, 112 Cong. Record, pp. 5289, 5290, 5292, 5946. Thus, the final bill approved by Congress excluded Puerto Rico, the Virgin Islands and Samoa from the S.S.I. program and retained the repealed Title I, X and XIV welfare programs for these jurisdictions. Under these programs, needy Puerto Ricans receive monetary help well below the federally defined poverty level ($4,550 and $3,870 per year, urban and rural respectively, for a family of four). During FY 1973, for the OAA program, 42 U.S.C. §301 et seq., the average monthly payment received by a Puerto Rican was $18; $14 under the AB program, 42 U.S.C. §1201 et seq.; and $13 under the APTD program, 42 U.S.C. §1351 et seq. See, Arnold Baker, *A Study of Federal Public Assistance Payments to Puerto Rico* p. 10, August 21, 1974.

In order for a classification to pass muster under a rational basis test several inquiries are relevant; namely, whether it treats classes of similarly situated persons differently or whether all persons within the classes established are treated equally. *Carrington v. Rash*, 380 U.S. 89, 93 (1965), *Hoyt v. Florida*, 368 U.S. 57, 59 (1961), *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1909); whether the classification is rational and bears a reasonable relationship to a proper legislative purpose. *McGinnis v. Royster*, 410 U.S. 263, 270 (1973); *Weber v. Aetna Casulty and Surety Co.*, 406 U.S. 164 (1972); *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964).

The first reason advanced by appellants to justify the exclusion is the economic differences between Puerto Rico and the United States. These differences, it is argued, sustain the theory that the extension of the S.S.I. program to Puerto Rico would provide a significant disincentive to gainful employment and thereby "Threaten to further disrupt Puerto Rico's already ailing economy." In other words, the primary justification for the exclusion is that Congress was concerned with promoting job opportunities for persons beyond the age of retirement, unable to work (disabled), or blind. This absurdity itself defies classification. The legislative record is totally devoid of references to this reasoning as justifying exclusion. However, assuming arguendo that such were the actual justification it would be so patently and egregiously irrational so as to warrant no further discussion. The class of persons covered by the act are by definition excluded from the productive work force. In order for the residents of the fifty states to participate in the program they have to establish that they are not able to sustain themselves through gainful employment. This is the common denomination to the three categories. The same holds true for residents of Puerto Rico in order for them to insure participation in the OAA, AB, and APTD programs which continue to be administered in Puerto Rico and funded by Defendant-Appellant. Plaintiff-Appellee Gautier Torres was declared to be disabled and thereby unfit for gainful activity by defendant. If he were to participate in the APTD program presently available to the residents of Puerto Rico the sign of his monthly payment would be approximately $13.00 a month, instead of the $157.70

he receives from the S.S.I. program. This would have no impact whatsoever on his ability for work; it would only affect his ability to subsist.

The economic differences between Puerto Rico; namely an official unemployment rate varying from 22% to 25% and a per capita income level roughly half of that of Mississippi, the poorest state, underline what appears to be appellant's primary concern: cost. On page 7 of the Jurisdictional Statement he avers that the estimated cost of extending the S.S.I. program to the residents of Puerto Rico would exceed $300 million per year.[14] The high cost of extending the program to Puerto Rico is a result of the fact that there are many needy persons residing in Puerto Rico who are blind, aged or disabled. The very reason for the creation of the program, the existence of substantial members of needy persons categorically eligible is thereby used to justify the non-extension of the program to Puerto Rico. This is a circular argument whose point of departure is *Catch-22*.

Although appellant appears to have backed out of his fiscal balance argument it would appear that his concern for the cost of extending the program to Puerto Rico is basically a rehashing of said argument. Although the desire to preserve fiscal integrity is a valid governmental purpose, *Shapiro v. Thompson*, 394 U.S. 618 (1969), it may not be achieved by treating differently persons pertaining to the same class of

[14]This finding is based on unofficial figures from the Bureau of Economic Analysis, Department of Commerce. It is estimated that one out of every 10 residents in Puerto Rico would be eligible. See Note 7, Jurisdictional Statement.

individuals. The constitutional permissible answer to the fiscal integrity concern was suggested by the Supreme Court in *Morton v. Ruiz*, 415 U.S. 199 (1974), where the court expressed:

> "Thus, if there were only enough funds appropriated to provide meaningfully for 10,000 needy Indian beneficiaries and the entire class of eligible beneficiaries numbered 20,000, it would be incumbent upon the BIA to develop an eligibility standard to deal with this problem, and the standard, if rational and proper, might leave some of the class otherwise encompassed by the appropriation without benefits. But in such a case the agency must, at a minimum, let the standard be generally known so as to assure that it is being applied consistently and so as to avoid both the reality and the appearance of arbitrary denial of benefits to potential beneficiaries."
>
> 415 U.S. at 231.

Also in *Hornsby v. Allen*, 326 F.2d 605 (5th Cir. 1964), the Fifth Circuit answered a similar contention as follows:

> "If there are too many qualified applicants . . . the proper remedy is for the Board . . . to adopt reasonable rules . . . which will raise the standards of eligibility . . . ; the solution is not to make arbitrary selections among those qualified." 326 F.2d at 610.

Likewise, the solution in the instant case was not to solve the fiscal problem by arbitrarily excluding Puerto Ricans that meet the same eligibility standard as American citizens and lawfully admitted aliens in the states and the District of Columbia. The eligibility standard could have been raised so that the most needy would have received the limited benefits.

In view of the fact that appellant has been particularly laconic in his jurisdictional statement insofar as outlining valid legislative purposes for the exclusion of residents of Puerto Rico from the S.S.I. program, we will now consider some of his past efforts to justify said exclusion. Appellant argued in the District Court that Congress can limit the effect of a statute to a certain class of individuals and that such limitation necessarily gives rise to some differences in application. Motion to Dismiss, at p. 11. We do not question the validity of that assertion. However, the issue is not whether Congress can limit the effect of a statute to a certain class of individuals, but if Congress can constitutionally exclude from the benefits individuals who belong to the same class for whom the benefits are intended. The S.S.I. program was established as a "national program to provide . . . income to individuals who have attained age 65 or are blind or disabled . . ." (42 U.S.C. §1381, emphasis added); "to assure that virtually no aged person will have to live below the poverty level" (118 Cong. p. H 10195); and "to achieve more uniform treatment of recipients" (1972 U.S. Code Cong. & Adm. News, p. 4989). It is obvious that indigent Puerto Rican domiciliares who have attained age 65 or are blind or disabled are within the class of individuals for whom this national legislation was intended. The fact that Puerto Rican domiciliaries were included in the original S.S.I. bill approved by the House further reinforces the assertion that they belong to the class intended to be protected by the S.S.I. legislation. Therefore, since they are similarly situated to their continental counterparts who receive the benefits, their exclusion constitutes a *prima*

facie violation of the equal protection requirement of reasonable classification See Tussman & tenbroek, The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 348 (1949). The Equal Protection Clause requires Congress to treat persons similarly circumstanced alike unless the differential treatment is "unreasonable, not arbitrary, and . . . rest(s) upon some ground of difference having a fair and substantial relation to the object of the legislation . . . *Royster Guano Co. v. Virginia,* 253 U.S. 412, 415 . . ." *Reed v. Reed,* 404 U.S. 71, at 75-76. If the purposes of the S.S.I. programs were "to achieve more uniform treatment of recipients" and "to assure that virtually no aged person will have to live below the poverty level," it is evident that the exclusion of Puerto Rican domiciliaries simply is neither reasonable nor based upon some ground of difference having a fair and substantial relation to the objectives of the S.S.I. legislation. On the contrary, the exclusion actually defeats the goals of the S.S.I. program as to the excluded Puerto Rican class.

Appellant had further attempted in the District Court to justify the exclusion by citing the following quote from *Geduldig v. Aiello,* 94 S.Ct. 2485 (1974):

> "This Court has held that, consistently with the Equal Protection Clause, a State "May take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others . . ."

Of course, while a legislature may address a problem selectively, still it has the constitutional obligation to treat similarly situated individuals alike unless there is a valid reason to justify the differential treatment.

Moreover, if "a State may take one step at a time, addressing itself to *the phase of the problem which seems most acute to the legislative mind*" (emphasis added), then the S.S.I. program should have been implemented in Puerto Rico before the rest of the United States. In Puerto Rico the cost of living is considerably higher than that of the continental United States and more than 50% of the population have incomes below the federally defined poverty level. See Arnold Baker, supra, at 1-5. "Although Puerto Rico ranks 26th among U.S. flag jurisdictions in population, it ranks fourth in the total number of 'poor people" . . . Notwithstanding this appalling fact, Puerto Rico ranks 40th in receipt of Federal funds." Arnold Baker, supra, at 5. Thus, following the *Geduldig* rationale the S.S.I. program should have been implemented in Puerto Rico first since here is where the problem is most acute.

Another argument advanced by appellant to justify the exclusion of Puerto Rican domiciliaries from the S.S.I. program is that Puerto Rican domiciliares are exempted from federal income taxes. Motion to Dismiss, p. 13. Aside from the fact that Congress could lawfully extend its Internal Revenue laws to the Commonwealth of Puerto Rico if it chose to, and therefore the applicability of federal tax laws in the Commonwealth of Puerto Rico is something outside the control of the Puerto Rican community, that is not a legitimate governmental purpose. It was specifically rejected in *Shapiro v. Thompson, supra,* where the Supreme Court stated:

> "Appellants argue . . . the . . . classification may be sustained . . . on the basis of the contributions they have made to the community through the payment of taxes . . . Appellants' reasoning would logically . . . permit the State to apportion all benefits and services according to the part tax contributions of its citizens. *The Equal Protection Clause prohibits such an apportionment of state services . . .*
>
> In sum . . . limitation of welfare benefits to those regarded as contributing to the state is (not) a constitutionally permissible state objective." 394 U.S. at 630-33 (Emphasis supplied).

Appellant is not unaware of the dubious validity of his stated purposes.[15] The Under Secretary's Advisory Group Report on Puerto Rico, Guam and the Virgin Islands (hereinafter "The Report") makes the following findings concerning the impact of the special entitlement provisions of the Social Security Act:

> "The exclusion from S.S.I. and Prouty benefits denies a higher standard of living to a large number of elderly and disabled persons in these jurisdictions." The Report at p. 5.
>
> "The principal justification advanced for the exclusions and limited entitlement has been the special tax status of these jurisdictions. The Advisory Group has concluded . . . That there is little justification for addressing this issue within the context of the Social Security Act. To do so unfairly penalizes low income persons in these countries for a tax advantage that accrues to upper income groups." The Report at p. 6.

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[15] In October 1976 a Report of the Under Secretary's (HEW) Advisory Group on Puerto Rico, Guam and the Virgin Islands. Said report analizes the special entitlement of Puerto Rico, Guam, and the Virgin Islands and makes specific findings, conclusions, and recommendations.

"Additional arguments in opposition to changing current treatment of Puerto Rico, Guam, and the Virgin Islands concern both the budgetary impact of increased finding for these jurisdictions and the fear that a sudden influx of Federal SSI and other public assistance dollars into the local economy would be disruptive. Neither of these arguments appear persuasive. The budgetary impact can be minimized in relation to a growing economy and the Food Stamp implementation in Puerto Rico has shown that a large influx of assistance does not necessarily disrupt the economy." The Report, at p. 6.

* * *

"In summary, the Advisory Group has concluded that the current fiscal treatment of Puerto Rico and the Territories under the Social Security Act is *unduly discriminatory* and undesirably restricts the ability of these jurisdictions to meet their public assistance needs." The Report at p. 7. (Emphasis supplied).

* * *

"The Commonwealth government has experienced difficulty under the present fiscal arrangement in meeting the full statutory service requirements under Titles IV, XIX, and XX of the Social Security Act."

The preceding quotations from The Report unequivocally substantiate our contention that there is no valid governmental interest justifying the special entitlement of Puerto Rico, Guam, and the Virgin Islands and that, therefore, their exclusion is totally arbitrary and capricious and a violation of equal protection.

3. The rationale advanced by appellants for excluding residents of Puerto Rico from the S.S.I. program do not meet the less stringent standards set by the rational

basis test. Their unrelatedness to any valid governmental purpose is readily apparent. The definition of the United States in a geographical sense so as to exclude Puerto Ricans is a discrimination against a suspect class or interferes with the free exercise fundamental right guaranteed by the U.S. Constitution. The reasons for invalidating it become more compelling and could only be defeated by an even more compelling interest of the state. *Graham v. Richardson*, 403 U.S. 365, 371, 375 (1971).

The classification in question does not only arbitrarily impinge on the fundamental right to travel of Puerto Rican domiciliaries to travel to and from the 50 states; it also exhibits the "traditional indicia of suspectness" which require the invocation of strict judicial scrutiny. The Court in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) set forth the criteria which must be analized in order to determine suspectness:

"The class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of powerlessness as to command extraordinary protection from the majoritarian political process." 411 U.S. at 28.

The class in question is composed of needy individuals who are blind, aged or disabled and who are residents of Puerto Rico. It is almost redundant to state that this class is saddled with disabilities. The persons pertaining to the class are by definition burdened with handicaps which have been determined by society to place them in a particularly vulnerable position so as to warrant special assistance from the state. Their disabilities are compounded by their lack of means to

subsist without financial aid from the state. There may, in fact, be no greater disability in our society than being completely unable, because of physical impediments to secure the minimum necessities without which one cannot live.

Since the Court's decision in *Rodriguez* at least one state court has found that classifications made against handicapped persons do merit strict judicial scrutiny. *In Re G.H.* 218 N.W.2d 441 (N.D. 1974). The reasons for requiring this particularly stringent protection point to another of the indicia of suspectness. Blind, aged and disabled persons residing in Puerto Rico are doubly powerless to affect the decisions that affect them and thereby require extra protection from the majoritarian political process. On the one hand it is a fact that handicapped persons are often prevented from exercising their right to vote by either express provisions of State Constitutions and statutes. Several states go further and exclude all those under some form of guardianship. See, Marcia Pearce Bergdorf, Robert Bergdorf, *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a "Suspect Class" Under the Equal Protection Clause*, 15 Santa Clara L. Rev., pp. 855-910 (1975). On the other hand those residing in Puerto Rico are further hampered by the fact that they do not have the right to vote in Presidential and Congressional elections. It suffices to remember that to this very date the laws of the United States generally apply to the residents of the Commonwealth unilaterally. See, The Puerto Rican Federal Relations Act, Section 9, 39 Stat. 954. Nothing is more contrary to the principle of a democratic government. Certainly in the discussions that led to the

exclusion of the Puerto Rican island community from the benefits of the S.S.I. program, there were no members present selected by Puerto Ricans who could argue or vote against such an exclusion. This, of course, is an example of the disability with which the Puerto Rican island community is saddled as a class.

It may be said that the long history of purposeful and unequal treatment endured by the blind, disabled and aged persons is partially a result of the fact that they are saddled with disabilities and powerless to have an impact in the majoritarian political process. In any event this long history has had its discriminatory effect not only against them but also against other segments of the Puerto Rican insular community. The following excerpts from a study commission by the Commonwealth of Puerto Rico amply illustrate this assertion:

> Since 1935, when the amendments to the Social Security Act established programs for Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Blind (AB), and Aid to the Permanently and Totally Disabled (APTD), Puerto Rico has received differential treatment in the Federal funding of these programs. Not until 1950 was Puerto Rico included at all. In 1950 Puerto Rico was provided limited Federal assistance by the allotment of a specific sum of money, not to exceed a prescribed ceiling for each program . . .
>
> The Medicaid program was enacted in 1965 as an amendment to the Social Security Act. It provides for Federal "matching grant" assistance recipients. The state share of the total program cost is governed by its per capita income, with no maximum level established. A statutory ceiling limits Federal Medicaid payments in Puerto Rico,

regardless of its extraordinary low per capita income. In addition, Puerto Rico is required to match Federal funds on a 50-50 basis.

The Prouty program was enacted as an amendment to the Social Security Act in 1966. It provides assistance to persons aged 72 and over who are not insured under the regular or transitional provisions of the Social Security Act. Puerto Rico was excluded altogether." Arnold Baker, A Study of Federal Public Assistance Payments to Puerto Rico, pp. 8, 9, August 21, 1974.

And the unequal treatment in the area of social and welfare legislation cannot be answered by saying that the unique Commonwealth status of Puerto Rico justifies the exclusion or differential treatment. Puerto Ricans were not even included at all in the Social Security established programs until 1950, when the Commonwealth did not even exist. Yet since 1917 they have been American citizens and have served compulsorily and voluntarily in the Armed Forces. Besides, in programs like the S.S.I. and Title II Social Security, where the federal government's relationship with American citizens is direct, not through a state or local government, the status of the particular political entity should be irrelevant.

Thus, from the history of the Puerto Rican island community since its annexation by the United States in 1898 to the present time, one has to reach the conclusion that Puerto Ricans, as American citizens residing in Puerto Rico, are an example of a discreet and insular minority deserving judicial extraordinary protection. *Nixon v. Condom*, 286 U.S. 73 (1932); *Nixon v. Herdon*, 273 U.S. 536; *U.S. v. Carolene Products Co.*, 304 U.S. 144, 152-153 n. 4 (1938);

Graham v. Richardson, supra; *San Antonio Independent School District v. Rodriguez*, supra. The blind, disabled and aged persons bearing the burden of this exclusion clearly meet the three different "traditional indicia of suspectness" established by the Supreme Court: the class disabilities, the history of purposeful unequal treatment, and the position of political powerlessness. In the case of political powerlessness, judicial extraordinary protection is indispensable since the disfranchisement of Puerto Rican American citizens prevents even the existence of a minority vote truly representative of Puerto Rican interests.

In *United States of America v. Thompson*, 452 F.2d 1333 (1971), cert. denied 405 U.S. 1075, the Court of Appeals for the District of Columbia Circuit ruled that the strict scrutiny test was applicable to congressional legislation applicable to the District of Columbia because the residents of the District of Columbia occupied a profoundly anomalous position in the federal system and were deprived of the right to vote. The Court reasoned:

"Although the courts have a vital role to play in preserving our constitutional rights, we normally depend upon the vote as "preservative of other basic civil and political rights." Minorities can usually protect themselves by playing their role in the political process and forming coalitions with other groups to secure a majority. But it is senseless to remit District residents to the political process, since for them there is no political process. The principle of majority rules loses its legitimacy when not all the votes are counted. See, *Developments in the Law-Equal Protection*. 82 Harv. L. Rev. 1065, 1124-1126 & n. 275 (1969).

In this context, at least, the normal arguments for judicial restraint become no more than hollow shibboleths grotesquely detached from the logic which once supported them. There is no reason to pay deference to the views of a representative body which does in fact represent those against whom it is discriminating. Therefore, discriminatory classifications affecting District residents must be subjected to the strictest possible review. See *Hobson v. Hansen*, D.D.C. 269 F. Supp. 401, 508 & n. 198 (1967), affirmed sub nom. Smuck v. Hobson, 132 U.S. App. D.C. 372, 408 F.2d 175 (1969) (en banc). It is not enough for such classifications to be merely rational or even plausible; the justification offered must actually be convincing. Otherwise, the danger of "experimentation" with the rights of the voiceless residents of the District is too great to be tolerated. Since we are far from convinced that the classification urged by the Government serves any legitimate policy objective, we reject it as violative of equal protection." 452 F.2d at 1341.

See also *D.C. Federation of Civic Associations, Inc. v. Volpe*, 434 F.2d 436 (1970); *U.S. v. McDonald*, 481 F.2d 513, 516 (1973). That rationale is fully applicable in the instant case. The Puerto Rican island community is as much powerless, voteless minority as the District of Columbia community.

Finally, the established classification is based on "suspect criteria" because the exclusion of Puerto Rico from S.S.I. amounts to an exclusion of a class of American citizen whose ethnic, racial and cultural origin is different from the rest of the United States. The Court may take judicial notice of the fact that more than 95% of the American citizens domiciled in Puerto Rico are native Puerto Ricans, ethnically, racially and

culturally different from the majority of the American citizens who reside in the fifty states and the District of Columbia. Thus, the alleged geographical distinction is in essence a distinction based on national and ethnic origin and therefore based on "suspect criteria."

If the reasons advanced by appellants to justify the exclusion fail to meet the rational basis test, it is perfectly clear that they would be even less significant if subjected to strict scrutiny. Such is the case before the Court.

4. There exists considerable dispute as to the source of the right to travel. However, commentators and courts unanimously agree on its existence. Before 1868 its existence was recognized in two decisions of this Court. In his dissent in *The Passenger Cases*, 48 U.S. (7 How.) 282 (1849), Chief Justice Taney indicated that this right is an incident of national citizenship guaranting free access to the seat of the Government and to the courts and offices of every state. In *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867) a majority of the Court expressly based its decision on this right, which it found necessary in order to permit a full redress of grievances in Washington. Chief Justice Taney's dissent in *The Passenger Cases*, supra, was cited approvingly, specially the following passage:

> "Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States from the most remote *States or territories*, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every State in the Union . . . For all the great purposes for which the Federal government was formed we are one

people, with one common country. We are all citizens of the United States and as members of the same community must have the right to pass and repass through *every part of it* without interruption, as freely as in our own states." *The Passenger Cases*, supra, at page 492 as cited in *Crandall v. Nevada*, supra, at pages 48-49. (Emphasis added).

With the advent of the Fourteenth Amendment in 1868, some decisions chose to ascribe the right to travel to the privileges and immunities clause of that Amendment as well as to the correlative clause found on Article IV of the Constitution. See, e.g. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168 (1868) Article IV); *Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (Fourteenth Amendment); *Williams v. Fears*, 179 U.S. 270, 274 (1900) (Fourteenth Amendment); *Ward v. Maryland*, 79 U.S. (12 Wall.) 418 (1870) (Article IV); *Edwards v. California*, 314 U.S. 160 (1941) (concurring opinion of Justice Douglas) (Fourteenth Amendment).

Later cases have not followed this method and have refused to ascribe this right to any specific clause of the Constitution, although the First Amendment and the Due Process Clause of the Fifth Amendment have been mentioned as possible sources. See, e.g., *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *Zemel v. Rusk*, 381 U.S. 1 (1965); *United States v. Guest*, 383 U.S. 745 (1966); *Kent v. Dulles*, 357 U.S. 116 (1958); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

The confusion concerning its origin notwithstanding, the salient fact is that this Court has always considered the right to travel to be a *fundamental* constitutional right and has subjected both state *and federal* statutes

which impinge on it to strict scrutiny under the equal protection clause of the Fourteenth Amendment and the equal protection component of the due process clause of the Fifth Amendment. See generally Chafee, *Three Human Rights in the Constitution of 1787*, pp. 171-181, 187 et seq. (1956); ten Broek, *The Constitution and the Right of Free Movement* (1955); Comments, 70 Colum. L. Rev. 134, 44 N.Y.U. L. Rev. 989 (1969); 31 Ohio St. L. J. 371 (1970); 21 S. C. L. Rev. 796 (1969); 11 Wm. & Mary L. Rev. 472 (1969); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Shapiro v. Thompson*, supra; *Memorial Hospital v. Maricopa County*, supra.

Admittedly, almost all cases that have subjected statutes to strict scrutiny due to their impingement on the fundamental right to travel have dealt with state statutes. In *Shapiro*, however, this Court was confronted with three statutes establishing one-year residence requirements to receive AFDC assistance which were assailed on equal protection-right to travel grounds. Two of these were state statutes. The third was a *congressional statute* applicable to the District of Columbia. Yet, this Court subjected all three to strict scrutiny, due to their impingement on the right to travel, and declared them unconstitutional as violative of the equal protection of the laws. The only distinction this Court made between the state and the federal statutes pertained to the constitutional source under which they were declared unconstitutional. The Court declared the state statutes void under the equal protection clause of the Fourteenth Amendment. The federal statute, on the other hand, was declared unconstitutional under the due process clause of the Fifth Amendment.

The Court found it necessary to subject the statutes in *Shapiro* to strict scrutiny because of their deterrent effect on the exercise of the right to travel and because of their post-travel penalizing effect. Yet no actual proof of deterrence was required of plaintiffs in *Shapiro*, as Judge Coffin very ably indicated in *Cole v. Housing Authority*, 435 F.2d 807, 810 (1st Cir. 1970), also citing *Vaughan v. Bower*, 317 F. Supp. 37 (D. Ariz.), aff'd mem., 400 U.S. 884 (1970), for this proposition. Judge Coffin's conclusion was implicitly approved in *Dunn v. Blumstein*, supra, at page 340, the Court stating:

> "*Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' cases in this Court always relied on the presence of actual deterrence."

Express approval followed in *Memorial Hospital v. Maricopa County*, supra, at page 257 n. 10. See generally, Note, *Durational Residency Requirements for Supplemental Security Income for the Indigent Aged, Blind and Disabled*, 25 Syracuse L. Rev. 674 (1974).

Maricopa is important because of its clarification and reformulation of the *Shapiro* and *Dunn* standards. It stands for the preposition that whenever a statutory classification operates to *penalize* an individual who has exercised his constitutional right of interstate migration, it must be subjected to strict scrutiny. *Maricopa*, supra, at 258. What is a *penalty* appears to depend on a comparison of the infringement, as represented by the nature of the right involved or benefit withheld and the extent and length of the prohibition, with the asserted governmental interest. See Comment, *Memorial Hospital v. Maricopa County: The Present Status of Right to Travel*, 6 Colum. Human Rights L. Rev. 551, 561

(1974). Whenever the right or benefit involved constitutes a "basic necessity of life" for plaintiff, a compelling governmental interest must justify its abridgement or postponement under the *Shapiro-Dunn-Maricopa* standards. *Maricopa*, supra, at 259.

In the case at bar, plaintiff is a disabled person whose SSI benefits constitute his only means of support. Upon his return to Puerto Rico, his birthplace, he was informed that the would no longer receive those benefits. While *Shapiro*, *Dunn* and *Maricopa* involved relatively short waiting periods, what is involved here is an absolute, unconditional and indefinite deprivation of plaintiff's benefits brought about by the automatic operation of a Congressional statute. Plaintiff has been effectively *penalized* for exercising his fundamental right to travel. He, an American citizen formerly living in the State of Connecticut, has been deprived of his basic means of support for exercising his right to establish his domicile in another American jurisdiction. We submit that this situation is more extreme than those of *Shapiro*, *Dunn* and *Maricopa*. It is no answer, nor does it reduce the penalty or ameliorate plaintiff's plight, that all other residents of plaintiff's new domicile are subject to the same exclusion. On the contrary, as we alleged at the District Court level, the exclusion really forces needy Puerto Ricans, who otherwise are qualified to receive S.S.I. benefits, to leave Puerto Rico in order to secure the basic means to survive. It forces them, in order to receive these indispensable, essential benefits, to leave their birthplace or their adopted permanent residence. Forced travel to the continental United States cannot be equated to the exercise of the right to travel. It is the very negation of

that right. Cf. Alvarez-Gonzalez, "Puede el Congreso Discriminar contra los Residentes de Puerto Rico al Aprobar Leyes Nacionales que Proveen Beneficios a los Individuos?" (Transl.: "May Congress discriminate against Residents of Puerto Rico when it Approves National Laws Providing Benefits to Individuals?"), 45 Rev. Jur. U.P.R. 45, 56 (1976).

The right to travel is a necessary attribute of a democratic society. Travel itself is a manifestation of freedom of expression assimilative to speech. We therefore believe that one of the basic components of the right to travel is the right to refrain from traveling at all, to another jurisdiction under the U.S. flag assimilating it to the proposition made by this Court in *Wooley v. Maynard*, 45 L.W. 4379 (1977) to the effect that the right of freedom of expression protected by the First Amendment includes both the right to speak freely and the right to refrain from speaking at all. By limiting the S.S.I. program to certain American flag jurisdictions, Congress is forcing citizens to either remain or move to those jurisdictions, thus depriving a considerable number of citizens and resident aliens from freely exercising their right to choose a domicile in the United States which, if the right to travel is to have any content at all, must be deemed its basic attribute.

One of the purposes of the S.S.I. program was "to achieve more *uniform* treatment of recipients under the Federal-State public assistance programs." 1972 U.S. Code Cong. & Adm. News, p. 4989 (emphasis added). What sort of uniform treatment can be achieved if it is uniform exclusively for the continental United States? In the instant case plaintiff has been effectively penalized for his interstate migration although this was

accomplished under the guise of the Puerto Rican residency exclusion. The exclusion, undoubtedly, chills the assertion of constitutional rights by penalizing those who choose to exercise them. Thus, strict judicial scrutiny is also appropriate in this case due to the statute's severe restriction of the right to travel.

If the statute is subjected to strict scrutiny, we submit, for the reasons previously stated in the suspect class context, that the exclusion established through the combined operation of Sections 1611(f) and 1614(e) of the Social Security Act is patently unconstitutional under the due process clause of the Fifth Amendment, there existing no *legitimate* governmental interest to sustain it.

Defendant has consistently urged at the District Court level that the right to travel does not apply "with the same force to travel between the states and [the] Commonwealth." Defendant's Memorandum of Law of April 20, 1976. Even under the less exacting "fundamental rights" standard of the *Insular Cases* (*De Lima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Dorr v. United States*, 195 U.S. 138 (1904)) and *Balzac v. Porto Rico*, 258 U.S. 298 (1922), it is a foregone conclusion that the *fundamental* right to travel is to be deemed applicable to Puerto Rico. To deny its applicability to non-state American flag jurisdictions would be tantamount to re-writing the history of the United States of America. It was more than a hundred years ago that Chief Justice Taney, in his dissent in *The Passenger Cases*, supra, recognized the importance of this right, expressly refusing to make a distinction between States and territories. It was also more than a

hundred years ago that Chief Justice Taney's words were cited approvingly by this Supreme Court in *Crandall v. Nevada*, supra. In its original form the right to travel comprised (and still comprises) "the right of the citizen of this great country, protected by implied guarantees of its Constitution, 'to come to the seat of government to assert any claim he may have upon that government' ". *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), citing *Crandall v. Nevada*, supra. Cf. First Amendment of the Constitution ("Congress shall make no law–abridging . . . the right of the people . . . to petition the Government for a redress of grievances."). We submit that this right must of necessity apply with the same force and effect in states and in non-state jurisdictions, specially so in the latter, whose inhabitants are classic examples of 'discrete insular minorities', classes "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973).

CONCLUSION

For the grounds stated in the Opinion of the District Court and the reasons enumerated and argued in this motion the judgment of the District Court should be summarily affirmed.

Respectfully submitted,

SALVADOR TIO
Attorney for Appellee

November, 1977.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil Number: 75-1331

CESAR GAUTIER TORRES on behalf of himself and all others similarly situated, PLAINTIFF

v.

DAVID MATTHEWS, Secretary of Health, Education and Welfare, DEFENDANT

OPINION

Torruella, J.

Title XVI of the Social Security Act (SSA), 42 USC 1381 et seq., also known as the Supplemental Security Income (SSI) program,[1] establishes "a national program to provide supplemental security income to individuals who . . . are . . . disabled." 42 USC 1381. Pursuant to Section 1611(f) of the SSA, 42 USC 1382(f), no individual is eligible for these benefits during any month in which "such individual is outside the United States." Furthermore, the statute provides that once "an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days." The term "disabled" is defined, in part, as one who "is a

[1] Public Law 92-603, October 30, 1972, 86 Stat. 1465.

resident of the United States." 42 USC 1382c(a)(1)(B). In turn, Section 1614(e) of the SSA, 42 USC 1382c(e), defines " 'United States', when used in a geographical sense" as indicated above, as meaning the 50 States and the District of Columbia.

Plaintiff, a citizen of the United States, was found to be eligible to receive SSI benefits, due to disability, while residing in Hartford, Connecticut. During the months of September through November, 1975 he received monthly payments in the amount of $157.70.

On November 7, 1975, Plaintiff moved to San Juan, Puerto Rico. Shortly after his arrival there he visited the Social Security offices to inform this Agency of his change of address, in order to enable him to continue receiving his SSI checks. While there, Plaintiff was verbally notified by an employee of this Agency that he had rendered himself ineligible to receive further SSI benefits by reason of his change of residence to Puerto Rico. Plaintiff was instructed to immediately turn over to the Social Security Administration any SSI benefits received while he resided in Puerto Rico.

Without further ado, Plaintiff proceeded to file the present action in which he seeks to have the residency requirement set aside as contravening the due process clause of the Fifth Amendment of the Constitution of the United States. On November 26, 1975, pursuant to 28 USC 2284(3), and after a specific finding of irreparable injury to Plaintiff, the District Court issued a temporary restraining order against Defendant prohibiting the discontinuance of Plaintiff's SSI

benefits until such time as the questions raised by this suit as decided by the Three Judge District Court convened for these purposes.

On December 19, 1975 the Social Security Administration sent Plaintiff a "Notice of Planned Action" wherein he was informed that his SSI benefits would be suspended effective December 1, 1975. This Notice also advised Plaintiff of his appeal rights. In compliance with the Court's outstanding temporary restraining order, the Notice stated that Plaintiff would continue to receive his SSI benefits while the order remained in effect.

On January 19, 1976 Plaintiff proceeded to file with the Administration a "Request for Reconsideration of the Notice of Planned Action." On February 20, 1976 this Request was denied. As grounds for this action, it was stated: "Although you meet all other factors of eligibility, you do not meet the residence requirements. To be eligible for Supplemental Security Income checks, you must live in one of the 50 States or Washington, D.C."

After several preliminary procedural interchanges the Administration has affirmed its decision as final for purposes of 42 USC 405(g), thus concluding that no further exhaustion of administrative remedies is necessary. See *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); *Weinberger* v. *Salfi*, 422 U.S. 749 (1975); 20 CFR 416.1424c.

Plaintiff contends that the exclusion from SSI benefits of a citizen of the United States for the sole reason of his change in residence to Puerto Rico, is re-

pugnant to the Fifth Amendment of the Constitution of the United States in that it establishes an irrational and arbitrary classification violative of the equal protection component of the due process clause of said Constitutional provision. As alternative grounds Plaintiff further contends that the statute in question infringes upon his constitutional right to travel and freedom of movement in that it forces him, in order to qualify for these benefits (which to him are essential), to remain within the 50 States and the District of Columbia.

Defendant replies that this legislation constitutes a valid exercise by Congress of its plenary powers pursuant to the territorial clause of Article IV, Section 3 of the Constitution, and that no arbitrary classification is created by the Statute in question. Relying upon the so-called *Insular Cases*,[2] Defendant claims that "[t]he equal protection component of the due process clause of the Fifth Amendment of the Constitution does not require Congress to afford the Commonwealth of Puerto Rico the same treatment under the scope of its enactments as though it were a state."

This last contention is the starting point for the resolution of the questions raised by this case.

The *Insular Cases*, which were the product of acquisition by the United States of various non-contiguous territories after the termination of the Spanish-American War, resolved the issue of whether the Constitution "follows the flag." After much debate,[3] the Court in *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922), created[4] the doctrine of incorporated versus

[2] *De Lima* v. *Bidwell*, 182 U.S. 1 (1901); *Dooley* v. *United States*, 182 U.S. 222 (1901); *Downes* v. *Bidwell*, 182 U.S. 244 (1901); *Dorr* v. *United States*, 195 U.S. 138 (1904); *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922).

[3] For some contemporary legal thinking, see Baldwin, *The Constitutional Questions Incident to the Acquisition Government by the United States of Island Territory*, 12 Harv. L. Rev. 393 (1899); Lowell, *The Status of Our New Possessions —A Third View*, 13 Harv. L. Rev. 155 (1899); Palfrey, *The Growth of the Idea of Annexation, and Its Breaking Upon Constitutional*, 13 Harv. L. Rev. 371 (1899); Randolf, *Constitutional Aspects of Annexation*, 12 Harv. L. Rev. 291 (1899); Longdell, *The Status of Our New Territories*, 12 Harv. L. Rev. 364 (1899). A later article also contains some interesting views on this subject, Coudert, *The Evolution of the Doctrine of Territorial Incorporation*, 26 Col.L.Rev. 823 (1926).

[4] This process was recently described as follows in *Examining Board* v. *Flores de Otero*, —— U.S. —— (1976), decided June 17, 1976, at footnote 30 of page 26 of the slip opinion:

> "The division of opinion in the Congress over how, and to what extent, the Constitution applied to Puerto Rico was reflected in the Court's opinions in *Downes*. Mr. Justice Brown believed that the question was whether Congress had extended the Constitution to Puerto Rico; Mr. Justice White, with whom Justices, McKenna and Shiras joined, propounded the theory of incorporated and unincorporated territories, and Mr. Justice Gray was of the opinion that the question was essentially a political one to be left to the political branches of government. The Chief Justice, with whom Justices Harlan, Brewer, and Peckham joined, dissented on the ground that the Constitution applied to Puerto Rico *ex propio vigore*. Mr. Justice White's approach in *Downes* v. *Bidwell* was eventually adopted by a unanimous Court in *Balzac* v. *Porto Rico*."

[Footnote continued on page 6a]

unincorporated territories whereby in the later case (that is, territories for which Congress had not expressed an intention of eventual Statehood) only "certain fundamental personal rights declared in the Constitution" were held to be in effect within its geographical confines. (258 U.S. at pages 312-313). In *Balzac*, a criminal slander prosecution for published "reflections" on the then Governor of Puerto Rico, the Court held that Puerto Rico was an unincorporated Territory. Therefore, the Court concluded, there did not exist a Sixth Amendment right to trial by jury, because such a trial was not a "fundamental" right.[5]

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[4] [Continued]

For a more jocular description of this process see "Mr. Dooley at His Best" (1938), F. Dunne, also reported in a note entitled *Inventive Statesmanship* v. *The Territorial Clause: The Constitutionality of Agreements Limiting Territorial Powers*, 60 Va. L. Rev. 1041, 1063 (1974).

[5] Interestingly enough the Supreme Court has since then held that the right to trial by jury is "*fundamental* to the American scheme of justice." *Duncan* v. *Louisiana*, 391 U.S. 145, 149 (1967) (emphasis supplied); *Baldwin* v. *New York*, 399 U.S. 66 (1969). Furthermore, it is unlikely that the offense for which Balzac was sentenced to five months imprisonment would be held to be a triable offense under current Supreme Court reasoning. Cf. *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1954); *Garrison* v. *Louisiana*, 379 U.S. 64 (1964). *Ashton* v. *Kentucky*, 389 U.S. 195 (1966).

Since the *Insular Cases*, the Supreme Court has significantly advanced the equality of rights for other cognizable minority citizens of the United States, by striking down similar judge-made distinctions bearing on the rights of such citizens (Cf. *Plessy* v. *Ferguson*, 163 U.S. 537 (1896) and *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

[Footnote continued on page 7a]

Defendant's reliance on the *Insular Cases*, however, is the product of a misconception as to the issues before us. We are not here concerned with the alleged power of Congress to establish disparate treat-

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[5] [Continued]

Expectations for the imminent demise of the *Insular Cases* were raised by the decisions in *Reid* v. *Covert*, 354 U.S. 1 (1956), *Kinsella* v. *Singleton*, 361 U.S. 234 (1960), *Grisham* v. *Hagan*, 361 U.S. 278 (1960), and *McElroy* v. *Guagliardo*, 361 U.S. 281 (1960), all dealing, in different variations, with the application of the Constitution to civilians who accompany directly upon the *Insular Cases* the Court said in *Reid* v. *Covert*, *supra*:

> "This Court and other federal courts have held or asserted that various constitutional limitations apply to the Government when it acts outside the continental United States. While it has been suggested that only those constitutional rights which are 'fundamental' protect Americans abroad, we can find no warrant, in logic or otherwise, for picking and choosing among the remarkable collection of "Thou shalt nots' which were explicitly fastened on all departments and agencies of the Federal Government by the Constitution and its Amendments . . ." (354 U.S. at pages 8-9).

The Court went on to say:

> "The 'Insular Cases' can be distinguished from the present cases in that they involved the power of Congress to provide rules and regulations to govern *temporarily* territories with wholly dissimilar traditions and institutions whereas here the basis for governmental power is American citizenship. Moreover, it is our judgment that *neither the cases nor their reasoning should be given any further expansion.* The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the

[Footnote continued on page 8a]

ment towards the United States citizens who reside in Puerto Rico. Rather, the focus of our attention should be directed to determining whether a constitutional right of a citizen of the United States has been improperly penalized *while he is within one of these States.* We see this as the more relevant framing of the issues because although Plaintiff lost his benefits while physically in Puerto Rico, the statutory prohibitions that permitted this result came into play from the very moment when they exerted their force upon Plaintiff. From this standpoint, Plaintiff is in the same position now as if he would have remained in Connecticut and brought a declaratory judgment suit there to challenge the validity of the sections at issue, in compliance with the requirements of the Declaratory Judgment Act, 28 U.S.C., Sections 2201, 2202. See *Public Service Commission of Utah* v. *Wycoff Co.*, 344 U.S. 237, 242-244 (1952); *Golden* v. *Zwickler*, 394 U.S. 103, 108-11 (1969).

It is now beyond question that the right to travel and to freedom of movement, particularly within the United States, are fundamental rights of all citizens

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[5] [Continued]

benefit of a written Constitution and undermine the basis of our Government. . . ." (354 U.S. at page 14; emphasis supplied).

Unfortunately, there are recent indications that the Court has not yet seen fit to lay the cadaver of the *Insular Cases* to rest. The aforecited case of *Examining Board* v. *Flores de Otero, supra,* may very well have given new warmth to this otherwise moribund corpse. (See pages 25-28 of the slip opinion).

of the United States, *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250, 254 (1974); *Shapiro* v. *Thompson*, 394 U.S. 618, 629-633, 641-642 (1969).

In *United States* v. *Guest*, 383 U.S. 745, 757-758 (1966), the Court said:

> "The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.
>
> ". . . [T]he right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event freedom to travel throughout the United States has long been recognized as a basic right under the Constitution."

See also *Kent* v. *Dulles*, 357 U.S. 116, 125-127 (1957). Cf. *Flemming* v. *Nestor*, 363 U.S. 603 (1960).

Shapiro v. *Thompson*, supra, is particularly relevant. That case involved constitutional challenges to statutory provisions of Connecticut, Pennsylvania and the District of Columbia which required one year's residence as a prerequisite to welfare eligibility. Appellants' principal contentions were to the effect that the waiting period was needed to preserve the fiscal integrity of public assistance program and as a permissible attempt to discourage indigents from entering a State solely to obtain larger benefits. The Court stated, at 394 U.S. page 634:

> ". . . [I]n moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest is unconstitutional."

Pursuant to the Equal Protection Clause of the Fourteenth Amendment, the Court struck down the state statutes as failing to meet this standard. The Court further decided:

> "The waiting-period requirement in the District of Columbia Code . . . is also unconstitutional even though it was adopted by Congress as an exercise of federal power. In terms of federal power, the discrimination created by the one-year requirement violates the Due Process Clause of the Fifth Amendment. '[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'" '. . . For the reasons we have stated in invalidating the Pennsylvania and Connecticut provisions, the District of Columbia provisions is also invalid—the Due Process Clause of the Fifth Amendment prohibits Congress from denying public assistance to poor persons otherwise eligible solely on the ground that they have not been residents of the District of Columbia for one year at the time their application are filed." (394 U.S. at pages 641-642).

Considering the fundamental nature of the right to travel, we can perceive of no reason why the stand-

ards which restrictive legislation must meet are not applicable with equal vigor to any impingement upon travel *from*, as distinguished from travel to, a State. *Kent* v. *Dulles*, supra. Cf. *Zemel* v. *Rusk*, 381 U.S. 1 (1965). Furthermore, if we view these principles in the light of the application to Plaintiff of the sections of the Statute in question, it is validly apparent that such provisions have restricting, inhibiting, chilling and penalizing effects upon Plaintiff's exercise of a fundamental constitutional right, and can survive our scrutiny only if there is a compelling governmental interest that will justify such treatment. *Memorial Hospital* v. *Maricopa County*, supra, at pages 253-262; *Shapiro* v. *Thompson*, supra, at page 631; *Cole* v. *Housing Authority of City of Newport*, 435 F.2d 807 (C.A. 1, 1970).

Our search for a "compelling governmental interest" within the Medusa-like legislative history of Public Law No. 92-603 resembles the proverbial quest for the needle in the haystack. See 1972 U.S. Code Congressional and Administrative News, Vol. 3, pp. 4989-5400.

As originally envisioned in H.R. 1, one of the principal purposes of the SSI provisions was the establishment of "uniform treatment of recipients under the Federal State public assistance program" (id., p. 4989), to thus have "nationally uniform requirements for such eligibility factors as the level and type of resources allowed." Id. p. 4992. In consonance with this goal H.R. 1, included Puerto Rico (as well as Guam and the Virgin Islands) with-

in the SSI program. Id. pp. 5013, 5324, 5350.[6] However, the benefits for these jurisdiction were "adjusted by the ratio of the per capita income of each of these locales, to the per capita income of the lowest of the 50 States." Id., pp. 5022, 5320, 5349-5350.

There were misgivings expressed to H.R. 1 by several Congressmen. In a document entitled "Additional Views of Hon. Hugh L. Carey, Hon. Charles A. Vanik, Hon. William J. Green, and Hon. James C. Corman on H.R. 1." (Id., pp. 5362-5367), the following statements were made:

> "We are concerned with the provisions which would permit states to reinstitute residence requirements of up to one year. Population stability is assured by equal opportunity for employment and for those in need by a national welfare system paying adequate benefits, rather than through the establishment of interstate barriers to the mobility of the poor in exactly the way which the Supreme Court prohibited in *Shapiro* v. *Thompson*, (394 U.S. 618).
>
> . . .
>
> We recognize that the Committee action moves in the direction of more equitable treatment of the Commonwealth of Puerto Rico and other insular areas. This is evidenced by the change in benefit level for a family of four from $636 to $1,320. This figure, however, is considerably below the federal minimum standard of $2,400. We

[6] Section 2014(e) of H.R. 1 specifically included Puerto Rico within the definition of the term "United States." Id., p. 5324.

> recognize that this is an involved and complicated question. We recognize that the relationship between income level in Puerto Rico and state public assistance benefits presents a problem and that this problem has been negotiated by the Administration AND THE Commonwealth government and those in the Department of Health, Education and Welfare.
>
> The problem remains that as long as States such as New York, Pennsylvania, Massachusetts, Ohio, etc. have a more attractive level of benefits, there is an incentive to migrate to those areas from the Commonwealth and other insular areas at a time when unemployment is a problem both in the area of origin and in the area of destination. With this in mind, the Department, which is undertaking the administration of the program in insular areas and in the States, should be prepared to accept a new responsibility. The Department should initiate such positive programs as are required to improve opportunities for employment through training and bring about a better system of benefits through work programs than has been in effect heretofore.
>
> *It is not our intent to state that any such program be designed to impede or deter citizens from moving freely in search of employment.* Rather, we want to make sure that a decision would be made on the grounds of self-improvement; not due to pure economic differential in welfare.
>
> We are pleased the Secretary has agreed, therefore to implement these programs which would benefit the citizens of Puerto Rico and other

insular areas as well as all the other citizens of the United States found to be eligible and in need." (Emphasis supplied).

For reasons that are to our viewpoint, unclear, the Senate completely eliminated Puerto Rico from SSI coverage, thus relegating it to treatment under the then existing Federal-State programs. 42 U.S.C. 301, 1201, 1351.

In its brief the Government asserts "[t]he cost factor and the effect of the extension of SSI benefits to Puerto Rico" as the rational basis for Congressional action. It does not discuss the issue of compelling state interest separately and we thus assume that it considers its assertions as to rational basis and compelling state interest to be closely akin. We take the substance of the Government's argument to mean that if SSI benefits were to apply to residents of Puerto Rico to the same extent as to those of the 50 States and the District of Columbia, that the total cost of the program would be higher, and that the benefits paid to Puerto Rican residents, when compared to the local per capita income, could have a deleterious effect upon the character of Puerto Rican welfare recipients.[7]

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[7] In its brief, the Government quotes the following statements made before the Senate Committee on Finance on H.R. 1 (in hearing held July 27, 29, August 2, 3, 1971, page 95), as "principal evidence of Congressional intent in removing coverage for Puerto Rico from this provision":

"In fact, a comment from a very high official from Puerto Rico early this year was that 'we do not want any

[Footnote continued on page 15a]

Even accepting these statements at face value, we fail to see how those factors have any connection with the facts presented by this case. Here we have a United States citizen who resides in one of the States and starts receiving SSI benefits while there. His qualifying for the receipt of these benefits while in Connecticut, and his continued receipt of the same, can have no bearing on any added cost that may be incurred by giving these benefits to the residents of Puerto Rico, which is not at issue here. Similarly, there can be no logical connection between such a situation and the import upon Puerto Rican welfare recipients. Although it can be argued that the higher Stateside benefits would encourage migration for the pu pose of qualifying for SSI, not only is there an absence of proof that the reasoning behind the geographic limitations is to discourage such internal migration, but if such were *sub silentio* the rationale, it would be a clearly impermissible compelling state interest. *Memorial Hospital* v. *Maricopa County*, supra, at pages 263-264; *Shapiro* v. *Thompson*, supra, at pages 631, 641-642.

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[7] [Continued]

part of this, because if you put 33.7 percent of the people in Puerto Rico in category of being eligible for welfare, it will ruin the character of our people."

If this be evidence of Congressional intent, it is weak evidence indeed, particularly when, as is recognized by the Government in its brief, and as is readily apparent from the quoted statement itself, the statement is inapplicable to SSI but rather deals with H.R. 1 in general. The granting of increased benefits to the blind, incapacitated, and those aged over 65 in Puerto Rico can hardly place 33.7% of the Puerto Rican population in a position of claiming SSI benefits.

The above leads us to the forceful conclusion that, under the facts of this case, there is a lack of such compelling state interest as to justify penalizing Plaintiff's right to travel. We therefore conclude that Section 1611(f) and Section 1614(e) of the SSA are unconstitutional as applied to Plaintiff.

In reaching this result we are not unaware of the possibility that, if the Social Security Act remains in its present form, we may be opening the door to certain undesirable practices. This is inevitable when dealing with this type of legislation, and of course, we can not presume that such actions will be those of the large majority of citizens. In any event, such contingencies are the proper subject of corrective legislative and regulatory endeavor and should not be determinative of the issues here presented.

The Clerk shall enter Judgment in accordance with this Opinion.

In San Juan, Puerto Rico, this 14th day of February, 1977.

/s/ Jose V. Toledo
JOSE V. TOLEDO
Chief, District Judge

/s/ Juan R. Torruella
JUAN R. TORRUELLA
District Judge

MCENTEE, *Senior Circuit Judge* (dissenting). While I have great respect for the scholarly nature of the majority's opinion and while I am sympathetic to the policy considerations which it reflects, I am unable to agree with the majority as to the significance of the legal principles at issue. Accordingly, I must dissent.

In my view, what is basically at issue here is the Congressional decision that SSI benefits are to be unavailable to anyone not located in one of the fifty states or the District of Columbia. 42 U.S.C. § 1381 *et seq.* This I consider to be the real issue, rather than a citizen's right to travel.

Given the unique relationship between the Commonwealth of Puerto Rico and the United States, *see Examining Board* v. *Flores de Otero*, —— U.S. —— (June 17, 1976); *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 42 (1970),[1] I do not believe that Congress is *required* to extend any one particular financial benefit to those located in the Commonwealth.[2] While I

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[1] *See also* 48 U.S.C. § 731, *et seq.*; *Caribtow Corp.* v. *OSHRC*, 493 F.2d 1064 (1st Cir. 1974) and cases cited. *See generally* de Passalacqua, The Constitutional and Political Status of the Island of Puerto Rico, 10 Rev. de Derecho Puertorriqueno 11 (1970); Leibowitz, the Applicability of Federal Law to the Commonwealth of Puerto Rico, 56 Geo. L. J. 219 (1967); Magruder, The Commonwealth Status of Puerto Rico, 15 U. Pitt. L. Rev. 1 (1953).

[2] Nor in fact has Congress done so historically. *See* Leibowitz, *supra* note 1, at 269-70.

It should be noted that the unicity of Puerto Rico's relationship to the United States does not always work to the Island's disadvantage. In the tax area, for example, Puerto

might well have voted to extend SSI benefits to Puerto Rico had I been a member of the legislative branch, as a judge I am unable to perceive any mandate—constitutional or otherwise—that this must be done.

As for the majority's argument based on the right to travel, I would simply state that I have found no case which extends the rationale of *Shapiro* v. *Thompson*, 394 U.S. 618 (1969)[3] to travel other than between two or more of the fifty States or the District of Columbia. And I do not believe that the present status of the complex relationship between Puerto Rico and the United States constitutes an adequate predicate for a judicial extension of that rationale to the instant case.

I recognize that this case raises very important issues, and I am deeply impressed by the cogency with which the majority articulates its position. Nevertheless, for the reasons stated, I am unable to subscribe to their views, and I respectfully dissent.

/s/ Edward M. McEntee
EDWARD M. MCENTEE
Circuit Judge

Rico is the beneficiary of certain quite favorable legislative provisions. *See, e.g.*, 26 U.S.C. §§ 933, 7653. *See also* Hector, Puerto Rico: Colony or Commonwealth?, 6 N.Y.U.J.Int'l L.&Pol. 115, 135 & nn. 110 & 112 (1973).

[3] *See also Memorial Hospital* v. *Maricopa County*, 415 U.S. 250, 254-55 & nn.7-8 (1974); *United States* v. *Guest*, 383 U.S. 745 (1966). *See generally* comment, A Strict Scrutiny of the Right to Travel, 22 U.C.L.A. LRev. 1129 (1975).

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Civil No. 75-1331

CESAR GAUTIER TORRES on behalf of himself and all others similarly situated, PLAINTIFF

v.

DAVID MATTHEWS, Secretary of Health, Education and Welfare, DEFENDANT

JUDGMENT

This action having come for a final hearing before a three judge court, Judges Torruella, Toledo and McEntee sitting, and the issues having been duly rendered, the Court by majority opinion (Hon. Edward McEntee dissenting) hereby

ORDERS, ADJUDGES and DECREES that 42 U.S.C. § 1611(f) and 1614(e) are unconstitutional as applied to plaintiff.

SO ORDERED.

San Juan, Puerto Rico, this 16th day of February 1977.

DENNIS A. SIMONPIETRI
Clerk
U.S. District Court for P.R.

/s/ Ramon A. Alfaro
By: RAMON A. ALFARO
Chief Deputy Clerk